In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 127

EVELYN F. GREGORY, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

This case presents the question whether a reorganization occurred within the meaning of Section 112 (i) (1) of the Revenue Act of 1928 where a new corporation was formed for the sole purpose of acquiring a portion of the assets of an existing corporation and distributing such assets to the sole stockholder of the transferring corporation in such manner as to vest absolute ownership of these assets in the stockholder with the minimum of resulting tax liability upon the stockholder and her corporation.

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We submit that the Circuit Court of Appeals correctly held that this transaction did not constitute a reorganization within the meaning of the statute since it was not the legislative intent to postpone the recognition of gain or loss where the alleged reorganization was not undertaken for reasons germane to the continuing conduct of the business venture but was conceived and used merely for the purpose of avoiding taxes which would otherwise result.

We concur in the view of the court below that Congress intended to encourage corporate reorganizations for business purposes but not to afford a present exemption where the purpose was solely tax avoidance upon a distribution of assets, and that the statute may be construed by reference to its purpose, as was done by this Court in *Pinellas Ice Co.* v. *Commissioner,* 287 U.S. 462.

But as the petition points out, the question presented is of public importance. In the interest of corporate taxpayers generally as well as for the guidance of the administrative officials, it is extremely desirable to secure an authoritative decision of this Court upon the question in view of the fact that a transaction alleged to be a reorganization may meet with the literal provisions of the statute and yet not come within the interpretation for which we contend, based upon the legislative intent.

While there is no direct conflict of decisions upon the question, in *B. B. Jones et al.* v. *Commissioner,*

not yet reported but found in 343 C.C.H., p. 9835, the United States Court of Appeals for the District of Columbia allowed the deduction of a loss by the stockholders upon the sale of bonds to their corporation, although it was evident from the nature of the transaction and the fact that the sellers controlled the buyer that the loss was fictitious and a sham. Here the court properly held that the creation of the Averill Corporation merely for the purpose of vesting ownership of the Monitor stock in the taxpayer was a sham reorganization, not to be recognized as one in fact. To this extent the decisions are inconsistent. A petition for a writ of certiorari has been filed by the Government in the *Jones* cases (Nos. 225–228).

While we believe that the decision of the court below is correct, in view of the importance of the question and the desirability of securing an authoritative rule for the future guidance of administrative officials as well as taxpayers, we do not oppose the granting of the writ.

Respectfully submitted.

J. CRAWFORD BIGGS,
Solicitor General.

JULY 1934.

U. S. GOVERNMENT PRINTING OFFICE: 1934